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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Rules and Policies	)	CS Docket No. 97-98
Governing Pole Attachments	)	

COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files its comments in response to the Notice of Proposed Rulemaking ("Notice"), FCC 97-94, issued by the Commission on March 14, 1997 in the above-referenced proceeding.

I. INTRODUCTION AND SUMMARY

WorldCom is a global telecommunications company that provides facilities-based and fully integrated local, long distance, international, and Internet services. WorldCom is the fourth largest facilities-based interexchange carrier ("IXC") in the United States. Following its merger with MFS Communications Company, Inc. on December 31, 1996, WorldCom is now also the largest facilities-based competitive local exchange carrier ("CLEC") in the United States.

The Notice poses a series of detailed questions concerning calculating the proper rates for use of pole attachments and conduit. WorldCom will not devote its initial comments to most of these specific questions, but does reserve the right to address these issues in its reply comments. WorldCom also agrees with, and joins in, the initial comments submitted in this proceeding by the Association for Local Telecommunications Services ("ALTS"). In its comments here, WorldCom urges the Commission to adopt competitively-neutral and balanced rules governing the rates, terms, and conditions for telecommunications carriers to utilize pole attachments and conduit owned or controlled by other utilities. Those rules should: (1) require the incumbent local exchange carriers ("LECs") and cable television ("CATV") operators to publish the rates they are charging to CLECs, IXCs, and others for attaching to poles and utilizing conduit and rights-of-way; (2) require a "most favored nation" treatment, so that any pole attachment or conduit usage rate provided by an incumbent to another entity under a new or preexisting agreement must be made available to any other requesting carrier upon the same terms and conditions; and (3) codify the Commission's authority and intention to assume jurisdiction over the rates, terms, and conditions of pole attachments and usage of conduit space where the state public service commission has failed to certify itself, failed to adopt rules, or failed to act on pending complaints in a timely fashion. WorldCom believes that these actions collectively should help alleviate the continuing problem of unlawful rates and conditions imposed by incumbent utilities for attaching to poles or utilizing conduit or rights-of-way.

II. THE COMMISSION SHOULD ADOPT COMPETITIVELY-NEUTRAL AND BALANCED RULES FOR USE OF POLE ATTACHMENTS AND CONDUITS

WorldCom strongly supports the Commission's initiation of this proceeding. The Commission long has had the authority to "regulate the rates, terms, and conditions for pole attachments to provide that such rates are just and reasonable...."[1] With the passage of the Telecommunications Act of 1996, and the advent of local competition, the Commission's role in this area has expanded, and consequently should take on significantly increased importance.

Among the many issues presented for comment in the Notice, the Commission

[1] 47 U.S.C. Section 224(b)(1).

seeks comment on the rates being charged by utilities for pole attachments, and "how such rates comport with the statutory maximum rate."[2] The Commission also seeks comment on how its proposed conduit costing methodology will assist in "setting just and reasonable rates."[3] Recognizing the broad scope of the issues presented for discussion, the Notice also welcomes comments on additional issues related to pole attachment reform.[4]

As the Notice indicates, the specific formulas proposed by the Commission will determine the prices paid by both cable television systems and telecommunications carriers for attachments to poles, and use of space within ducts, conduit, or rights-of-way owned by other utilities (including power, water, and sewer companies). A separate methodology to determine prices for telecommunications carriers has been proposed and will become effective within five years of the enactment of the 1996 Act.[5] However, in the intervening period of time, the Commission must ensure that nascent local competition is not left vulnerable to onerous and discriminatory practices by incumbent telecommunications carriers for attaching to poles, occupying conduit, or using rights-of-way.[6] Indeed, where the state commission has failed to certify itself, failed to adopt rules, or failed to act on pending complaints in a timely fashion,

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[2] Notice at para. 21.

[3] Notice at para. 43.

[4] Notice at para. 47.

[5] 47 U.S.C. Section 224(d)(3); see also Notice at para. 5.

[6] WorldCom notes that the Notice does not explicitly address the proper formulas for determining the rates for use of rights-of-way owned or controlled by utilities. This important area also should be examined and rectified by the Commission in this proceeding, as continuing discrimination also exists in the rates charged by utilities for carriers to utilize their rights-of-way.

the Commission is fully empowered by statute to assume jurisdiction to require that the incumbent providers only charge "just and reasonable rates."[7] WorldCom strongly supports the Commission's assumption of jurisdiction in all such situations, and asks that the Commission adopt rules spelling out precisely when and how it will take on such authority.

Preliminarily, WorldCom is troubled by one legal conclusion in the Notice. After discussing the definition of a "utility," the Commission states that "Section 224(a)(5) excludes incumbent local exchange carriers as defined in Section 251(h)."[8] However, that provision only states that the term "telecommunications carrier" -- not "utility" -- does not include incumbent LECs.[9] This distinction is very important, because Section 224 establishes a number of statutory obligations that, by definition, apply to all utilities -- including the ILECs. WorldCom respectfully asks the Commission to revisit and clarify its earlier statement by stating that, for purposes of Section 224, ILECs are included within the formal definition of a "utility."

WorldCom believes that, consistent with the overall thrust of the 1996 Act, excessive rates and onerous terms and conditions for utilizing pole attachments and conduits constitute unlawful barriers to entry and competition. In particular, the incumbent LECs and other public utilities traditionally have been empowered by the state and local governments to install and control telephone poles, underground ducts, and conduit through public and private rights-of-way. Many local municipalities encourage, and often mandate, that other entities, such as new telecommunications service providers, utilize these existing poles, ducts, conduits, and

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[7] 47 U.S.C. Section 224(c); see also Notice at para. 3 n.10.

[8] Notice at para. 4 n.16.

[9] See 47 U.S.C. Section 224(a)(5).

other existing facilities. WorldCom believes that the economic cost to ILECs of making excess capacity in their ducts and conduit available to carry competitors' cable and wiring is relatively small. Nonetheless, the ILECs -- fully aware that their competitors' success depends in large part on reasonable access to available conduit space -- have charged, and continue to charge, excessive and discriminatory rates for such usage.

As a result, onerous and inequitable rates, terms, and conditions for attaching to poles, occupying conduit, or using rights-of-way pose a serious real-world problem for competitive local exchange carriers such as WorldCom. In fact, WorldCom has first-hand knowledge of instances where the incumbent LEC sets one rate for CATV providers to access its poles or conduit, and a far higher rate for competing CLECs to access those very same poles and conduit. For example, in one jurisdiction, where the public service commission has established that the cost for the ILEC to provide conduit space is 28.7 cents per foot, per year, and the ILEC in turn is only allowed to charge the local CATV provider 30 cents per foot, per year, that same ILEC charges WorldCom nearly <u>twenty times</u> that amount for the very same thing. No reasonable cost justification exists for such an outrageous disparate treatment of two service providers, and WorldCom submits that such treatment violates the 1996 Act.

There are numerous other instances where WorldCom and others must pay many times over what the CATV operator is paying for access to poles, conduit, or rights-of-way, or must pay significantly more in urban areas than in suburban or rural areas. The end result, of course, is a considerable obstruction to competition, and a chilling of future growth, all to the detriment of consumers. WorldCom has attempted repeatedly to reduce such excessive and discriminatory rates in its negotiations with the ILECs for new interconnection agreements, and renegotiations of existing agreements, or to overturn those rates with the assistance of the applicable state public service commissions. Unfortunately, these efforts have had only limited success to date. For example, in at least one instance, the ILEC has reneged on its good faith pledge in its interconnection agreement with WorldCom to renegotiate conduit rates within a specified period of time after signing the agreement. In many such instances, unresolved issues, such as questions concerning unperfected state jurisdiction over conduit use by telecommunications service providers, have acted to slow the process of resolving these disputes.

Given the pervasive nature of the problem of discriminatory and excessive rates for pole attachment, conduit usage, and rights-of-way, WorldCom believes that the Commission, as part of this proceeding, should require the incumbent LECs and CATV operators to publish the rates they are charging to CLECs, IXCs, and others for attaching to poles, utilizing conduit, and using rights-of-way. This would expose the gross inequities being perpetrated by some of these companies, and allow all parties to determine the appropriate, cost-based rates that should apply to all parties equally. Such a requirement is entirely consistent with the Commission's requirement in the Local Interconnection Order that all Class A ILECs file copies of their preexisting interconnection agreements by June 30, 1997.[10] In that decision, the Commission reasoned that:

> requiring filing of all interconnection agreements best promotes Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and non-

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[10] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-488, released August 8, 1996, at para. 171, petition for review pending and partial stay granted, sub nom., Iowa Utilities Board et al. v. FCC, No. 96-3321 and consolidated cases (8th Cir. Oct. 15, 1996) ("Local Interconnection Order").

> discriminatory terms.... Requiring all contracts to be filed also limits an incumbent LEC's ability to discriminate among carriers, for at least two reasons. First, requiring public filing of agreements enables carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others. Second, any interconnection, service or network elements provided under an agreement approved by the state commission under section 252 must be made available to any other requesting telecommunications carrier upon the same terms and conditions, in accordance with section 252(i).[11]

The very same reasoning applies here as well. In particular, a "most favored nation" treatment would impose a self-policing nondiscrimination requirement that would help ensure that all carriers are treated the same for utilizing the same facilities and services.

In addition, as indicated above, the Commission should emphasize (and codify into federal rules) its intention to assume jurisdiction over the rates, terms, and conditions of pole attachments and usage of conduit space where the state public service commission has failed to certify itself, failed to adopt rules, or failed to act on pending complaints in a timely fashion.[12] Taken together, these discrete but necessary actions by the Commission should help alleviate the continuing problem of unlawful rates and conditions imposed by incumbent service providers for attaching to poles or utilizing conduit.

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[11] Local Interconnection Order at para. 167.

[12] 47 U.S.C. Section 224(c).

III. CONCLUSION

The Commission should adopt competitively-neutral and balanced rules governing the rates, terms, and conditions for competing telecommunications providers to utilize pole attachments, conduit, and rights-of-way owned or controlled by other utilities.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 27th day of June, 1997, sent a copy of the foregoing "Comments of WorldCom" by hand delivery to the following:

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